

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 9

Introduced by Assembly Member Ammiano

(Principal coauthor: Assembly Member Yamada)

**(Coauthors: Assembly Members Gatto and Ma, Ma, John A. Pérez,
and Skinner)**

(Coauthor: Senator Kehoe)

December 6, 2010

An act to amend Sections ~~48900 and 48900.5~~ 234, 234.1, 234.2, and 234.3 of, and to add Sections ~~234.4, 234.5, 234.6, 234.7, 234.8, and 48900.45 to, the Education Code~~, 234.4 and 234.5 to, the *Education Code*, relating to pupil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as amended, Ammiano. Pupil rights: bullying.

Existing law provides that it is the policy of the state to afford all persons in public schools, regardless of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes, equal rights and opportunities in the educational institutions of the state, and that it is the purpose of existing law to prohibit acts that are contrary to that policy and to provide remedies therefor. Existing law requires the State Department of Education to develop a model handout, posted on

appropriate department Internet Web sites, describing the rights and obligations set forth in these provisions and the policies addressing bias-related discrimination and harassment in schools. Existing law also requires the department to monitor adherence to these provisions and, as part of its regular monitoring and review of local educational agencies, to assess whether local educational agencies have adopted a policy that prohibits discrimination and harassment and a process for receiving and investigating complaints of discrimination and harassment, as specified.

This bill would require the policy adopted by the local educational agencies to prohibit discrimination, harassment, intimidation, and bullying based on actual or perceived characteristics, as specified. The bill would also require the process for receiving and investigating complaints to include complaints of discrimination, harassment, intimidation, and bullying based on actual or perceived characteristics, as specified, and to include a requirement that school personnel who witness such acts to take immediate steps to intervene when safe to do so, a timeline to investigate and resolve complaints, and an appeal process, as specified. The bill would make other conforming changes.

~~Consistent with these provisions, this bill would require each school district, on or before July 1, 2012, to ensure that its policy prohibiting discrimination, harassment, intimidation, and bullying include specified components, and to include in its process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying specified components. The bill would require school districts to provide information to school district board members and pupils on the policy and the process, as specified.~~

Because this bill would require local educational agencies to perform additional duties, this bill would impose a state-mandated local program.

The bill would state the intent of the Legislature that school districts provide grade-level appropriate, professional development training to school personnel to implement the school district policy that prohibits discrimination, harassment, intimidation, and bullying.

~~The bill would also encourage all local educational agencies to collect data related to pupil experiences with discrimination, harassment, intimidation, and bullying, as specified. The bill would require the department, in the next revision of either the California Healthy Kids Survey or, if that is not feasible, in the next revision of the California Student Survey, to include questions seeking information on discrimination, harassment, intimidation, and bullying and require local~~

educational agencies to survey their pupils with those questions. The bill would also require the department to request that the Youth Risk Behavior Survey include questions seeking information on discrimination, harassment, intimidation, and bullying, as specified. The bill would require the Superintendent of Public Instruction, at the beginning of each school year, to post on his or her Internet Web site, and to provide to each school district, a list of statewide resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying, and their families.

Existing law provides that a pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act, as specified, including having engaged in an act of bullying. Existing law provides that a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this provision.

This bill would authorize a superintendent of the school district or principal to use his or her discretion to provide alternatives to suspension or expulsion that are age-appropriate and designed to correct and address the root causes of the pupil's specific misbehavior by giving the pupil notice of the inappropriateness of the behaviors, teaching him or her appropriate behavior, and instituting increasingly severe responses for repeated instances of the same type of misbehavior, while still retaining the pupil in class or school, as specified. The bill would also specify that a pupil who is the target of an act of discrimination, harassment, intimidation, or bullying, as specified, shall not automatically be disciplined for defending himself or herself unless the superintendent or principal of the school, in his or her discretion, deems discipline to be appropriate, as specified.

The bill would provide that its provisions shall become operative on July 1, 2012.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares that the
2 State of California is committed to a safe and civil educational
3 environment for all pupils, employees, parents and legal guardians,
4 volunteers, and patrons that is free from discrimination, harassment,
5 intimidation, or bullying.
6 (b) The Legislature finds and declares that the intent of this act
7 is to clarify and supplement the existing law on discrimination,
8 harassment, intimidation, and bullying in public schools.
9 (c) The Legislature finds and declares all of the following:
10 (1) Pupils who are subjected to discrimination, harassment,
11 intimidation, or bullying may suffer long-term social, emotional,
12 and psychological harms.
13 (2) The public policy of this state is to reduce and ultimately
14 eliminate school-based discrimination, harassment, intimidation,
15 and bullying.
16 (3) The public policy of this state is to provide pupils with a
17 safe school environment in which all pupils are included and
18 respected and have an equal opportunity to participate in all school
19 activities and events.
20 (4) The most effective way to reduce discrimination, harassment,
21 intimidation, and bullying is to create a schoolwide culture of
22 inclusion and respect for differences.
23 (5) The public policy of this state is to provide support for youth
24 who are victimized by discrimination, harassment, intimidation,
25 or bullying, and support for the families of those youth.
26 ~~(6) The public policy of this state is to provide effective~~
27 ~~interventions for youth who engage in acts of discrimination,~~
28 ~~harassment, intimidation, and bullying to help them change their~~
29 ~~behavior and avoid entering the criminal justice system.~~
30 ~~(7)~~
31 (6) The public policy of this state is to ensure that laws and
32 policies that prohibit discrimination, harassment, intimidation, and

bullying are enforced evenhandedly and are not disproportionately applied to any class or group.

SEC. 2. Section 234 of the Education Code is amended to read:

234. (a) This article shall be known and may be cited as the Safe Place to Learn Act.

(b) It is the policy of the State of California to ensure that all local educational agencies continue to work to reduce discrimination, harassment, ~~and~~ violence, *intimidation, and bullying*. It is further the policy of the state to improve pupil safety at schools and the connections between pupils and supportive adults, schools, and communities.

SEC. 3. Section 234.1 of the Education Code is amended to read:

234.1. The department, pursuant to subdivision (b) of Section 64001, shall monitor adherence to the requirements of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and Chapter 2 (commencing with Section 200) as part of its regular monitoring and review of local educational agencies, commonly known as the Categorical Program Monitoring process. The department shall assess whether local educational agencies have done all of the following:

(a) Adopted a policy that prohibits discrimination ~~and~~, harassment, *intimidation, and bullying* based on the *actual or perceived* characteristics set forth in Section 422.55 of the Penal Code and Section 220, *and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. The policy shall include a statement that the policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district.*

(b) Adopted a process for receiving and investigating complaints of discrimination ~~and~~, harassment, *intimidation, and bullying* based on *any of the actual or perceived* characteristics set forth in Section 422.55 of the Penal Code and Section 220, *and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. The complaint process shall include, but not be limited to, all of the following:*

1 (1) A requirement that, if school personnel witness an act of
2 discrimination, harassment, intimidation, or bullying, he or she
3 shall take immediate steps to intervene when safe to do so.

4 (2) A timeline to investigate and resolve complaints of
5 discrimination, harassment, intimidation, or bullying that shall be
6 followed by all schools under the jurisdiction of the school district.

7 (3) An appeal process afforded to the complainant should he
8 or she disagree with the resolution of a complaint filed pursuant
9 to this section.

10 (4) All forms developed pursuant to this process shall be
11 translated pursuant to Section 48985.

12 (c) Publicized antidiscrimination~~—and~~, antiharassment,
13 anti-intimidation, and antibullying policies adopted pursuant to
14 subdivision (a), including information about the manner in which
15 to file a complaint, to pupils, parents, employees, agents of the
16 governing board, and the general public. The information shall be
17 translated pursuant to Section 48985. A school district shall, at a
18 minimum, do all of the following to comply with this subdivision:

19 (1) Publish the policy in all parent-student handbooks issued
20 in the school district and include a statement about where pupils
21 and parents can obtain a complaint form.

22 (2) Publish the policy and information about where a complaint
23 form can be obtained on the Internet Web site of the school district
24 and all individual school Internet Web sites, as applicable.

25 (d) ~~Posted antidiscrimination and antiharassment policies~~ the
26 policy established pursuant to subdivision (a) in all schools and
27 offices, including staff lounges and pupil government meeting
28 rooms.

29 (e) Maintained documentation of complaints and their resolution
30 for a minimum of one review cycle.

31 (f) Ensured that complainants are protected from retaliation and
32 that the identity of a complainant alleging discrimination~~—or~~,
33 harassment, intimidation, or bullying remains confidential, as
34 appropriate.

35 (g) Identified a responsible local educational agency officer for
36 ensuring district or office compliance with the requirements of
37 Chapter 5.3 (commencing with Section 4900) of Division 1 of
38 Title 5 of the California Code of Regulations and Chapter 2
39 (commencing with Section 200).

1 *SEC. 4. Section 234.2 of the Education Code is amended to*
2 *read:*

3 234.2. The department shall display information on curricula
4 and other resources that specifically address bias-related
5 discrimination ~~and, harassment, intimidation, and bullying~~ based
6 on ~~the any of the actual or perceived~~ characteristics set forth in
7 Section 422.55 of the Penal Code and Section 220 on the California
8 Healthy Kids Resource Center Internet Web site and other
9 appropriate department Internet Web sites where information about
10 discrimination ~~and, harassment, intimidation, and bullying~~ is
11 posted.

12 *SEC. 5. Section 234.3 of the Education Code is amended to*
13 *read:*

14 234.3. The department shall develop a model handout
15 describing the rights and obligations set forth in Sections 200, 201,
16 and 220 and the policies addressing bias-related discrimination
17 ~~and, harassment, intimidation, and bullying~~ in schools. This model
18 handout shall be posted on appropriate department Internet Web
19 sites.

20 *SEC. 6. Section 234.4 is added to the Education Code, to read:*

21 234.4. *It is the intent of the Legislature that school districts*
22 *provide grade-level appropriate, professional development training*
23 *to school personnel to implement the school district policy that*
24 *prohibits discrimination, harassment, intimidation, and bullying*
25 *adopted pursuant to subdivision (a) of Section 234.1.*

26 ~~SEC. 2. Section 234.4 is added to the Education Code, to read:~~

27 ~~234.4. (a) Consistent with subdivision (a) of Section 234.1,~~
28 ~~on or before July 1, 2012, each school district shall ensure that its~~
29 ~~policy prohibiting discrimination, harassment, intimidation, and~~
30 ~~bullying includes, but is not limited to, all of the following~~
31 ~~components:~~

32 ~~(1) A statement that all pupils have the right to participate fully~~
33 ~~in the educational process, free from discrimination, harassment,~~
34 ~~intimidation, and bullying pursuant to subdivision (a) of Section~~
35 ~~201.~~

36 ~~(2) A statement that each school in the district has an affirmative~~
37 ~~obligation to combat all forms of bias and a responsibility to~~
38 ~~provide equal educational opportunity pursuant to subdivision (b)~~
39 ~~of Section 201.~~

~~(3) A statement that California law and school district policy prohibit discrimination, harassment, intimidation, and bullying based upon any of the actual or perceived characteristics contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, any of the actual or perceived characteristics listed in Section 220, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. School districts are also encouraged to prohibit discrimination, harassment, intimidation, or bullying more generally, but the statement must contain a list of the characteristics set forth in Section 220.~~

~~(4) A description of the school district's procedure for addressing complaints of discrimination, harassment, intimidation, and bullying pursuant to subdivision (a) of Section 234.5.~~

~~(5) The names of two or more administrative personnel in each school as required by subdivision (c) of Section 234.5.~~

~~(6) A statement that all school personnel who witness an act of discrimination, harassment, intimidation, or bullying are required to take immediate steps to intervene when safe to do so.~~

~~(7) A statement that the policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or within any other school district that occur at any time, including, but not limited to, any of the following:~~

~~(A) While on school grounds.~~

~~(B) While going to or coming from school.~~

~~(C) During the lunch period whether on or off campus.~~

~~(D) During, or while going to or coming from, a school-sponsored activity.~~

~~(8) An attached copy of the written complaint form published by the school pursuant to subparagraph (3) of subdivision (a) of Section 234.5.~~

~~(9) A link to the Superintendent's list of statewide resources for youth who have experienced discrimination, harassment, intimidation, or bullying and for the families of those youth pursuant to Section 234.7.~~

~~(b) The policy shall be posted and publicized on or before July 1, 2012, as follows:~~

1 ~~(1) In all parent-student handbooks issued in the school district,~~
2 ~~which shall also include a statement that pupils are expected to~~
3 ~~contribute to building a culture of inclusion and respect.~~

4 ~~(2) On the school district's Internet Web site and all individual~~
5 ~~school Web sites.~~

6 ~~(3) In all school district and school administrative offices.~~

7 ~~(e) A statement notifying school personnel and pupils of the~~
8 ~~existence of the policy, and where a written copy of the policy is~~
9 ~~available in the school and the school district, shall be publicized~~
10 ~~and posted on or before July 1, 2012, as follows:~~

11 ~~(1) The statement shall be in age-appropriate language, and~~
12 ~~shall include, at a minimum, a list of the actual or perceived~~
13 ~~characteristics set forth in paragraph (3) of subdivision (a). The~~
14 ~~following statement is an example of language that may be used~~
15 ~~to comply with the requirement of this paragraph:~~

16
17 ~~"Discrimination, harassment, intimidation, and bullying are not~~
18 ~~acceptable ways to treat others. California law prohibits~~
19 ~~discrimination, harassment, intimidation, and bullying based on a~~
20 ~~student's actual or perceived disability, gender, gender identity,~~
21 ~~gender expression, nationality, race or ethnicity, religion, sexual~~
22 ~~orientation, or association with a person or group with one or more~~
23 ~~of these actual or perceived characteristics.~~

24 ~~Tell a teacher or a school employee if you see or experience~~
25 ~~discrimination, harassment, intimidation, or bullying. You have~~
26 ~~the right to file a complaint and to have the school protect you.~~
27 ~~Complaint forms are available on all school district Internet Web~~
28 ~~sites and in all school and administrative offices."~~

29
30 ~~(2) The statement shall be posted in all teacher lounges, staff~~
31 ~~rooms, classrooms, gyms, locker rooms, bathrooms, and cafeterias~~
32 ~~in each school.~~

33 ~~(d) The policy and the statement shall be translated pursuant to~~
34 ~~Section 48985. If translated, the policy and the statement shall be~~
35 ~~publicized and posted pursuant to subdivisions (b) and (c) in both~~
36 ~~the English and non-English versions.~~

37 ~~SEC. 3. Section 234.5 is added to the Education Code, to read:~~

38 ~~234.5. (a) Consistent with subdivision (b) of Section 234.1,~~
39 ~~on or before July 1, 2012, each school district shall include in its~~
40 ~~process for receiving and investigating complaints under the~~

1 department's Uniform Complaint Procedures as set forth in
2 department regulations, all complaints of discrimination,
3 harassment, intimidation, and bullying, except that the process for
4 receiving and investigating complaints of discrimination,
5 harassment, intimidation, and bullying shall include all of the
6 following components:

7 (1) A requirement that if school personnel witness an act of
8 discrimination, harassment, intimidation, or bullying he or she
9 shall take immediate steps to intervene when safe to do so.

10 (2) A timeline for each school in the school district or the school
11 district to investigate and resolve complaints of discrimination,
12 harassment, intimidation, and bullying that does not exceed 30
13 working days from the date the complaint was received. The
14 school, or if applicable, school district, shall report to the
15 complainant the resolution of the complaint within 45 working
16 days of the initial filing, if the complainant identifies himself or
17 herself and requests a response.

18 (3) A written complaint form published by the school district,
19 and made available at all school and school district offices and on
20 school and school district Internet Web sites, that is written in an
21 age-appropriate and understandable manner to ensure that all pupils
22 can access it, that includes, at a minimum, all of the following
23 components:

24 (A) Questions intended to elicit a description of the incident
25 complained of and to identify any individual who may have been
26 involved in, or witnessed, the incident.

27 (B) A checklist of the actual or perceived characteristics listed
28 in Section 220 to allow the complainant to identify whether one
29 of these characteristics was the basis of the discrimination,
30 harassment, intimidation, or bullying.

31 (C) A description of the complaint process and timeline.

32 (D) A statement that complainants will be protected from
33 retaliation and that those who investigate a complaint alleging
34 discrimination, harassment, intimidation, or bullying will protect
35 the confidentiality of the parties to the extent possible.

36 (E) A statement that the complaint may be filed anonymously,
37 and a space to indicate whether a response is requested.

38 (F) A description of the location at each school in the district
39 where the complaint may be filed, pursuant to subdivision (c).

1 ~~(G) A statement that the complainant has a right to appeal a~~
2 ~~school or school district resolution of a complaint and a description~~
3 ~~of how to file an appeal.~~

4 ~~(H) A statement that it is not necessary to exhaust any~~
5 ~~administrative complaint process before pursuing civil law~~
6 ~~remedies.~~

7 ~~(I) The names of the two or more personnel on each school~~
8 ~~campus, identified pursuant to subdivision (b), and of the local~~
9 ~~educational agency officer, identified pursuant to subdivision (g)~~
10 ~~of Section 234.1, responsible for ensuring district compliance with~~
11 ~~the department's Uniform Complaint Procedures as set forth in~~
12 ~~department regulations and Chapter 2 (commencing with Section~~
13 ~~200).~~

14 ~~(4) A process for a pupil to report complaints of discrimination,~~
15 ~~harassment, intimidation, or bullying to any school personnel or~~
16 ~~school district through any means other than the written complaint~~
17 ~~form that includes:~~

18 ~~(A) A requirement that school district or school personnel report~~
19 ~~the nonwritten complaint within 48 hours to the school or the~~
20 ~~school district for investigation and resolution.~~

21 ~~(B) A requirement that the pupil who made the nonwritten~~
22 ~~complaint is provided with the same information included in the~~
23 ~~written complaint form, as set forth in paragraph (3).~~

24 ~~(b) Each school district shall identify at least two school~~
25 ~~administrative personnel on each campus whose names and contact~~
26 ~~information are posted with the school district policy prohibiting~~
27 ~~discrimination, harassment, intimidation, and bullying, pursuant~~
28 ~~to the requirements of subparagraph (I) of paragraph (3) of~~
29 ~~subdivision (a). These personnel shall be:~~

30 ~~(1) Knowledgeable about the school district's policy and~~
31 ~~complaint procedure regarding discrimination, harassment,~~
32 ~~intimidation, and bullying.~~

33 ~~(2) Available to pupils as a resource to assist with written or~~
34 ~~verbal complaints of discrimination, harassment, intimidation, and~~
35 ~~bullying.~~

36 ~~(3) Able to refer pupils to counseling, as appropriate.~~

37 ~~(c) Each school district shall assign a specific location for every~~
38 ~~school in the district where complaints may be filed, such as the~~
39 ~~principal's office.~~

1 (d) If applicable, pursuant to Section 48985, each school district
2 shall make the complaint process available in the primary language
3 other than English.

4 (e) Consistent with subdivision (c) of Section 234.1, each school
5 district shall maintain documentation of complaints and their
6 resolution for a minimum of one review cycle of what is commonly
7 known as the department's Categorical Program Monitoring
8 process.

9 SEC. 4. Section 234.6 is added to the Education Code, to read:

10 234.6. (a) School districts, consistent with the provisions of
11 Article 3.6 (commencing with Section 32228) of Chapter 2 of Part
12 19, are encouraged to offer grade-level appropriate professional
13 development training for school personnel that covers all of the
14 following topics:

15 (1) The school district policy prohibiting discrimination,
16 harassment, intimidation, and bullying, adopted pursuant to Section
17 234.4.

18 (2) The actual or perceived characteristics covered by the school
19 district policy prohibiting discrimination, harassment, intimidation,
20 or bullying, pursuant to paragraph (3) of subdivision (b) of Section
21 234.4.

22 (3) The school district process for receiving and investigating
23 complaints of discrimination, harassment, intimidation, and
24 bullying, adopted pursuant to Section 234.5.

25 (4) Techniques for intervening in discrimination, harassment,
26 intimidation, and bullying, including how teachers and other school
27 personnel can create a schoolwide culture of inclusion and respect
28 for differences without infringing on pupils' free speech rights.

29 (5) The harm caused by discrimination, harassment, intimidation,
30 and bullying.

31 (6) Techniques for preventing discrimination, harassment,
32 intimidation, and bullying among pupils and for promoting positive
33 peer relationships.

34 (b) In the course of existing orientation provided to school
35 district board members, each school district shall provide school
36 board members with information about the school district policy
37 prohibiting discrimination, harassment, intimidation, and bullying,
38 adopted pursuant to Section 234.4, and the school district process
39 for receiving and investigating complaints of discrimination,

1 harassment, intimidation, and bullying, adopted pursuant to Section
2 234.5.

3 (e) ~~In the course of existing orientation provided to pupils, each~~
4 ~~school district, consistent with the provisions of Article 3.6~~
5 ~~(commencing with Section 32228) of Chapter 2 of Part 19, shall~~
6 ~~provide pupils with age-appropriate information about all of the~~
7 ~~following:~~

8 (1) ~~The school district policy prohibiting discrimination;~~
9 ~~harassment, intimidation, and bullying, adopted pursuant to Section~~
10 ~~234.4.~~

11 (2) ~~The actual or perceived characteristics covered by the school~~
12 ~~district policy prohibiting discrimination, harassment, intimidation,~~
13 ~~or bullying, pursuant to paragraph (3) of subdivision (b) of Section~~
14 ~~234.4.~~

15 (3) ~~The school district process for receiving and investigating~~
16 ~~complaints of discrimination, harassment, intimidation, and~~
17 ~~bullying, adopted pursuant to Section 234.5.~~

18 (4) ~~The difference between protected speech and discrimination,~~
19 ~~harassment, intimidation, and bullying.~~

20 (5) ~~The harm caused by discrimination, harassment, intimidation,~~
21 ~~and bullying.~~

22 SEC. 5. ~~Section 234.7 is added to the Education Code, to read:~~
23 ~~234.7.—~~

24 SEC. 7. *Section 234.5 is added to the Education Code, to read:*

25 234.5. At the beginning of each school year, the Superintendent
26 shall post on his or her Internet Web site and provide to each school
27 district a list of statewide resources, including community-based
28 organizations, that provide support to youth who have been
29 subjected to school-based discrimination, harassment, intimidation,
30 or bullying, and their families.

31 SEC. 6. ~~Section 234.8 is added to the Education Code, to read:~~

32 234.8. (a) ~~All local educational agencies are encouraged to~~
33 ~~collect data related to pupil experiences with discrimination,~~
34 ~~harassment, intimidation, and bullying each year. The data may~~
35 ~~be collected through annual participation in the California Healthy~~
36 ~~Kids Survey or, if inclusion of the information in that survey is~~
37 ~~not feasible, through participation in the California Student Survey.~~

38 (b) ~~The department shall, in the next revision of either the~~
39 ~~California Healthy Kids Survey or, if that is not feasible, in the~~
40 ~~next revision of the California Student Survey, include questions~~

1 seeking information on discrimination, harassment, intimidation,
2 and bullying based upon any of the actual or perceived
3 characteristics contained in the definition of hate crimes set forth
4 in Section 422.55 of the Penal Code, any of the actual or perceived
5 characteristics listed in Section 220, and disability, gender, gender
6 identity, gender expression, nationality, race or ethnicity, religion,
7 sexual orientation, or association with a person or group with one
8 or more of these actual or perceived characteristics, and require
9 local educational agencies to survey their pupils with those
10 questions.

11 (e) The department shall request that the Youth Risk Behavior
12 Survey include questions seeking information on discrimination,
13 harassment, intimidation, and bullying based upon any of the actual
14 or perceived characteristics contained in the definition of hate
15 crimes set forth in Section 422.55 of the Penal Code, any of the
16 actual or perceived characteristics listed in Section 220, and
17 disability, gender, gender identity, gender expression, nationality,
18 race or ethnicity, religion, sexual orientation, or association with
19 a person or group with one or more of these actual or perceived
20 characteristics.

21 SEC. 7. Section 48900 of the Education Code is amended to
22 read:

23 48900. A pupil shall not be suspended from school or
24 recommended for expulsion, unless the superintendent or the
25 principal of the school in which the pupil is enrolled determines
26 that the pupil has committed an act as defined pursuant to any of
27 subdivisions (a) to (r), inclusive:

28 (a) (1) Caused, attempted to cause, or threatened to cause
29 physical injury to another person.

30 (2) Willfully used force or violence upon the person of another,
31 except in self-defense.

32 (b) Possessed, sold, or otherwise furnished a firearm, knife,
33 explosive, or other dangerous object, unless, in the case of
34 possession of an object of this type, the pupil had obtained written
35 permission to possess the item from a certificated school employee,
36 which is concurred in by the principal or the designee of the
37 principal.

38 (c) Unlawfully possessed, used, sold, or otherwise furnished,
39 or been under the influence of, a controlled substance listed in
40 Chapter 2 (commencing with Section 11053) of Division 10 of the

1 ~~Health and Safety Code, an alcoholic beverage, or an intoxicant~~
2 ~~of any kind.~~

3 ~~(d) Unlawfully offered, arranged, or negotiated to sell a~~
4 ~~controlled substance listed in Chapter 2 (commencing with Section~~
5 ~~11053) of Division 10 of the Health and Safety Code, an alcoholic~~
6 ~~beverage, or an intoxicant of any kind, and either sold, delivered,~~
7 ~~or otherwise furnished to a person another liquid, substance, or~~
8 ~~material and represented the liquid, substance, or material as a~~
9 ~~controlled substance, alcoholic beverage, or intoxicant.~~

10 ~~(e) Committed or attempted to commit robbery or extortion.~~

11 ~~(f) Caused or attempted to cause damage to school property or~~
12 ~~private property.~~

13 ~~(g) Stolen or attempted to steal school property or private~~
14 ~~property.~~

15 ~~(h) Possessed or used tobacco, or products containing tobacco~~
16 ~~or nicotine products, including, but not limited to, cigarettes, cigars,~~
17 ~~miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew~~
18 ~~packets, and betel. However, this section does not prohibit use or~~
19 ~~possession by a pupil of his or her own prescription products.~~

20 ~~(i) Committed an obscene act or engaged in habitual profanity~~
21 ~~or vulgarity.~~

22 ~~(j) Unlawfully possessed or unlawfully offered, arranged, or~~
23 ~~negotiated to sell drug paraphernalia, as defined in Section 11014.5~~
24 ~~of the Health and Safety Code.~~

25 ~~(k) Disrupted school activities or otherwise willfully defied the~~
26 ~~valid authority of supervisors, teachers, administrators, school~~
27 ~~officials, or other school personnel engaged in the performance of~~
28 ~~their duties.~~

29 ~~(l) Knowingly received stolen school property or private~~
30 ~~property.~~

31 ~~(m) Possessed an imitation firearm. As used in this section,~~
32 ~~“imitation firearm” means a replica of a firearm that is so~~
33 ~~substantially similar in physical properties to an existing firearm~~
34 ~~as to lead a reasonable person to conclude that the replica is a~~
35 ~~firearm.~~

36 ~~(n) Committed or attempted to commit a sexual assault as~~
37 ~~defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal~~
38 ~~Code or committed a sexual battery as defined in Section 243.4~~
39 ~~of the Penal Code.~~

~~(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.~~

~~(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.~~

~~(q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, “hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, “hazing” does not include athletic events or school-sanctioned events.~~

~~(r) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, as defined in subdivisions (f) and (g) of Section 32261, directed specifically toward a pupil or school personnel.~~

~~(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section, unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:~~

~~(1) While on school grounds.~~

~~(2) While going to or coming from school.~~

~~(3) During the lunch period whether on or off the campus.~~

~~(4) During, or while going to or coming from, a school sponsored activity.~~

~~(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily~~

1 injury or serious bodily injury shall be subject to discipline pursuant
2 to subdivision (a):

3 (u) ~~As used in this section, “school property” includes, but is~~
4 ~~not limited to, electronic files and databases.~~

5 (v) ~~For a pupil subject to discipline under this section, a~~
6 ~~superintendent of the school district or principal may use his or~~
7 ~~her discretion to provide alternatives to suspension or expulsion~~
8 ~~that are age-appropriate and designed to correct and address the~~
9 ~~root causes of the pupil’s specific misbehavior by giving the pupil~~
10 ~~notice of the inappropriateness of the behaviors teaching him or~~
11 ~~her appropriate behavior, and instituting increasingly severe~~
12 ~~responses for repeated instances of the same type of misbehavior,~~
13 ~~while still retaining the pupil in class or school, including, but not~~
14 ~~limited to, any of the following:~~

15 (1) ~~Meeting with the pupil and his or her parent or guardian.~~

16 (2) ~~Reflective activities, such as writing an essay about the~~
17 ~~misbehavior.~~

18 (3) ~~Mediation to address the conflict between pupils.~~

19 (4) ~~Counseling.~~

20 (5) ~~Anger management.~~

21 (6) ~~Health counseling or intervention.~~

22 (7) ~~Mental health counseling.~~

23 (8) ~~Social-emotional cognitive skill building.~~

24 (9) ~~Community service, pursuant to Section 48900.6.~~

25 (10) ~~In-school detention or supervision during lunchtime, after~~
26 ~~school, or on weekends.~~

27 (w) ~~It is the intent of the Legislature that alternatives to~~
28 ~~suspension or expulsion be imposed against a pupil who is truant,~~
29 ~~tardy, or otherwise absent from school activities.~~

30 SEC. 8. ~~Section 48900.45 is added to the Education Code, to~~
31 ~~read:~~

32 48900.45. ~~A pupil who is the target of an act of discrimination,~~
33 ~~harassment, intimidation, or bullying under subdivision (r) of~~
34 ~~Section 48900, or Section 48900.2, 48900.3, or 48900.4, shall not~~
35 ~~automatically be disciplined for defending himself or herself~~
36 ~~against an act of discrimination, harassment, intimidation, or~~
37 ~~bullying under those sections unless the superintendent or principal~~
38 ~~of the school, in his or her discretion, based upon the~~
39 ~~circumstances, deems discipline to be appropriate. Discipline under~~

1 ~~this section shall be consistent with subdivisions (v) and (w) of~~
2 ~~Section 48900, and Section 48900.5.~~

3 ~~SEC. 9. Section 48900.5 of the Education Code is amended to~~
4 ~~read:~~

5 ~~48900.5. Suspension shall be imposed only when other means~~
6 ~~of correction, including, but not limited to, alternatives to~~
7 ~~suspension and expulsion pursuant to subdivision (v) of Section~~
8 ~~48900, fail to bring about proper conduct. However, a pupil,~~
9 ~~including an individual with exceptional needs, as defined in~~
10 ~~Section 56026, may be suspended for any of the reasons~~
11 ~~enumerated in Section 48900 upon a first offense, if the principal~~
12 ~~or superintendent of schools determines that the pupil violated~~
13 ~~subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the~~
14 ~~pupil's presence causes a danger to persons or property or threatens~~
15 ~~to disrupt the instructional process.~~

16 ~~SEC. 10. The Legislature finds and declares that it is the intent~~
17 ~~of this act to clarify existing law as set forth in Chapter 2~~
18 ~~(commencing with Section 200) of Part 1 of Division 1 of Title 1~~
19 ~~of the Education Code. The Legislature further finds and declares~~
20 ~~that, under existing case and statutory law, a school district and~~
21 ~~school could be held vicariously liable for any discrimination,~~
22 ~~harassment, intimidation, or bullying by any individual who has~~
23 ~~contact with pupils by virtue of employment or other contractual~~
24 ~~relationship with the school district and any discrimination,~~
25 ~~harassment, intimidation, or bullying related to school activity or~~
26 ~~attendance, as set forth in subdivision (s) of Section 48900, about~~
27 ~~which the school district or school knew or reasonably should have~~
28 ~~known.~~

29 ~~SEC. 11.~~

30 ~~SEC. 8. This act shall not be construed to limit pupil rights to~~
31 ~~free speech as protected by the United States Constitution, the~~
32 ~~California Constitution, Sections 48907 and 48950 of the Education~~
33 ~~Code, and other applicable law.~~

34 ~~SEC. 12.~~

35 ~~SEC. 9. This act shall not be construed to require an exhaustion~~
36 ~~of any administrative complaint process before civil law remedies~~
37 ~~may be pursued.~~

38 ~~SEC. 10. This act shall become operative on July 1, 2012.~~

1 ~~SEC. 13.~~

2 *SEC. 11.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

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